



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

Matter of: Fischer & Porter Company  
File: B-227941  
Date: October 28, 1987

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### **DIGEST**

Agency should not have disqualified bidder as nonresponsible for failure to adequately document fringe benefit costs deducted from its bid for cost comparison purposes under Office of Management and Budget (OMB) Circular A-76 procedures. Issue of sufficiency of documentation did not concern integrity of the bidder or the bidder's ability to perform contract successfully, rather issue involves the accuracy of the A-76 cost comparison.

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### **DECISION**

Fischer & Porter Company (F&P) protests the finding by the Army Corps of Engineers that the firm is ineligible for award of a contract under invitation for bids (IFB) No. DACW38-86-B-0083. The Army concluded that F&P, the apparent low bidder under the solicitation, was nonresponsible. F&P argues that the finding of nonresponsibility was improper. We sustain the protest.

The solicitation was issued in connection with an Office of Management and Budget (OMB) Circular No. A-76 cost comparison and was conducted as a two-step sealed bid procurement for the performance of operation and maintenance services at Grenada Lake, Mississippi. Prospective bidders were advised that an A-76 cost comparison would be conducted to determine whether it was more economical to have the work performed in-house or by a contractor. During the first step, four technical proposals were submitted, three of which were found to be acceptable. Of the three acceptable offerors, one withdrew its technical proposal prior to the submission of price proposals. Thereafter, bids were submitted by the two remaining firms. The bids were opened May 22, 1987, and F&P, the apparent low bidder, was selected for the A-76 cost comparison.

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Under the A-76 cost comparison procedures applicable to this IFB, fringe benefit labor costs were to be excluded from the in-house estimate and were excludible from the low bid, if the bidder properly documented its costs. The IFB instructed bidders to state separately their fringe benefit costs. The IFB further provided as follows:

"The apparent low responsive offeror must document any amounts claimed as thrift plan and social security (excluding Medicare) contributions. All documentation shall be provided to the contracting officer within five working days after bid opening."

The IFB then provided that whether an offeror's documentation fully substantiated its claimed costs would be used in determining the bidder's responsibility.

The Army conducted the initial cost comparison using the bid of F&P, allowing that firm to deduct a total of \$341,695 in fringe benefit costs. The resulting cost comparison showed that F&P's bid was lower than the government's in-house cost estimate by \$23,012. Thereafter, the contracting officer requested that F&P submit documentation to substantiate its deducted costs and F&P made an initial submission of that documentation on June 1. The contracting officer, dissatisfied with F&P's initial submission, telegraphed the firm on June 5, requesting additional documentation which F&P provided on June 16. Thereafter, the contracting officer determined F&P to be nonresponsive on grounds that the firm failed to provide adequate substantiating documentation. In this connection, the agency report contains a memorandum for the record in which the contracting officer specifically found, for example, that F&P's documentation did not provide evidence of Internal Revenue Service (IRS) approved, tax deferred thrift plans and specifically questioned computations for thrift plan costs. We note however, that the contracting officer's memorandum does not contain findings with respect to specific dollar amounts of F&P's claimed costs which were deemed inadequately documented.

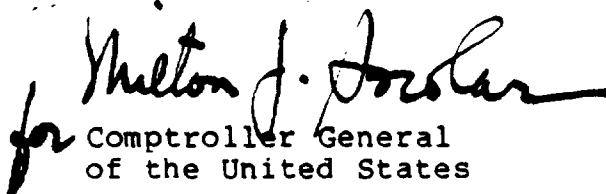
We do not believe that the sufficiency of the documentation furnished by F&P is a matter of that firm's responsibility, even though the IFB stated that the adequacy of a bidder's substantiating documentation would be used in determining responsibility. We have sustained the use of special responsibility standards, such as those requiring that a bidder have a requisite degree of experience or expertise. See Loyola College and NonPublic Education Services, Inc., a Joint Venture, et al., B-205994.2 et al., May 16, 1983, 83-1 CPD ¶ 507; Federal Acquisition Regulation (FAR), 48 C.F.R. § 9.104-2 (1986). Such standards, however, must bear a

reasonable relationship to the bidder's ability to perform the contract since they necessarily tend to restrict competition to those bidders who can meet the particular standards. Software City, B-217542, Apr. 26, 1985, 85-1 CPD ¶ 475.

In this case, we do not see how the sufficiency of F&P's cost documentation reasonably relates to that firm's responsibility. The Army has not suggested that F&P's documentation submission shows that the firm lacks integrity or that it otherwise shows F&P unqualified to perform the contract. Rather, the Army simply contends that the data submission is inadequate to substantiate F&P's claimed costs. Therefore, we believe that the Army's disqualification of F&P as nonresponsible was improper.

Accordingly, the protest is sustained to the extent that F&P was rejected based on a finding of nonresponsibility.

By separate letter of today, we are recommending that F&P be reinstated as the low responsible offeror for purposes of the A-76 cost comparison in this procurement. In this connection, we recommend that the Army allow or disallow specific dollar amounts of F&P's claimed fringe benefit costs prior to conducting the A-76 cost comparison. If F&P's offer is found not to be low due to the Army's disallowance of some or all of its claimed costs, F&P should be afforded the opportunity to subject that determination to the A-76 appeals process.

  
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